

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 20440
[REDACTED]	)	
	)	DECISION
Petitioner.	)	
	)	
	)	
	)	

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On July 27, 2007, the staff of the Sales, Use, and Miscellaneous Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Deficiency Determination [Redacted] (Taxpayer) proposing an amusement device tax and penalty for the period July 1, 2007, through June 30, 2008, in the total amount of \$1,580.

The Commission received a timely appeal and petition for redetermination postmarked August 6, 2007. On September 12, 2007, the Commission held an informal hearing via telephone at the Taxpayer's request. The Commission, having reviewed the file, hereby issues its decision upholding the tax and abating part of the penalty.

Background

Owners and operators of coin, currency, and token-operated amusement devices are required to purchase and display current decals by July 1 of each year. Bureau staff visits to various locations between July 5 and July 24, 2007, revealed 24 machines owned or managed by the Taxpayer; all without the required current decals affixed. Records show that only 15 decals were purchased. The taxpayer bought additional decals once notified. The Bureau later determined that it over-counted the Taxpayer's machines by two, which the Commission acknowledged by reducing the asserted penalty by \$100.

Following the mailing of the Notice of Deficiency Determination, the Bureau was informed that an additional 23 amusement devices did not have decals. The Taxpayer bought the additional decals and no additional penalty was asserted.

Idaho Code § 63-3623B cites the authority for the decal fee (also referred to as a permit fee) as well as the penalty provisions for non-compliance:

AMUSEMENT DEVICES. -- (a) For purposes of this section the term "amusement device" shall mean all coin, currency, or token operated machines and devices which are used for amusement including, but not limited to, game machines, pool tables, juke boxes, electronic games and similar devices.

(b) In lieu of the imposition of sales tax upon the use of the amusement device, the owner or lessee or person having the right to impose a charge for use of the amusement device must pay an annual permit fee of thirty-five dollars (\$35.00) for each such device.

(c) Upon payment of the permit fees, the state tax commission shall issue the permit(s) to the owner or lessee or person having the right to impose a charge for use of the amusement device. Such permit fee may be increased in a proportionate amount by the commission if the state sales tax rate increases.

(d) All applications for a permit renewal must be made to the state tax commission on or before July 1 of each year. Such application shall contain the same information required on an application to secure a seller's permit under this chapter and shall be accompanied by the annual permit fee due for each device.

(e) The state tax commission shall adopt a uniform system of providing, affixing and displaying official decals, labels or other official indicia evidencing that the owner, lessee, or person having the right to impose a charge for the use of the amusement device has paid the annual permit fee for such amusement device. No person subject to a permit fee under this chapter may impose a charge or collect any consideration for use of such amusement device unless such official decal, label, or other official indicia, as required herein, is affixed to such amusement device.

(f) In addition to the penalties set forth above and in section 63-3634, Idaho Code, the state tax commission may assess the following penalties:

**(1) If any owner, lessee, or person having the right to impose a charge for the use of any coin, currency or token operated amusement device in this state shall violate any provision of this section or any rule promulgated under this section, the commission may assess penalties, of fifty dollars (\$50.00) for each device for failure to pay timely permit sticker fees.**

(2) A person who knowingly secures or attempts to secure an amusement device permit sticker under this section by fraud, misrepresentation, or subterfuge or uses any permit issued under this section in a fraudulent manner shall be subject to a penalty of up to twenty-five thousand dollars (\$25,000).

(g) The state tax commission shall impose the penalties provided in this section by a notice of deficiency determination in the manner provided in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(h) The commission may revoke all permits of any person who operates any amusement device without complying with the provisions of this section. Notice of revocation shall be given in the manner provided for deficiencies in taxes in section 63-3629, Idaho Code, which shall be subject to review as provided in section 63-3631, Idaho Code.

(i) Permits issued under this section are transferable to another person only after written notice of the transfer is given to the state tax commission (Idaho Code §63-3623B, emphasis added.)

In 2005, the Taxpayer bought two decals following an audit by Bureau staff. In 2006, the Taxpayer was assessed \$300 in penalty for six machines without affixed decals. Past history of non-compliance is a factor in imposing a penalty in the current audit. In this case, the Commission exercises its discretion and adjusts the penalty to one-half of the amount asserted by the Bureau.

The taxpayer has not provided the Commission with information to establish that the amount asserted in the Notice of Deficiency Determination is incorrect. As a result, the Commission will uphold the tax deficiency notice for the period July 1, 2007, through June 30, 2008. A determination of the State Tax Commission is presumed to be correct (*Albertson's, Inc. v. State, Dept. of Revenue*, 106 Idaho 810, 814, 683 P.2d 846, 850 (1984)), and the burden is on the taxpayer to show that the deficiency is erroneous (*Parsons v. Idaho State Tax Commission*, 110 Idaho 572, 574-575 n.2 (Ct. App. 1986)).

Absent information to the contrary, the Commission finds the deficiency prepared by the Bureau, as adjusted, to be an accurate representation of the taxpayer's liability for the period July 1, 2007, through June 30, 2008.

WHEREFORE, the Notice of Deficiency Determination dated July 27, 2007, as ADJUSTED, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following:

	<u>TAX</u>	<u>PENALTY</u>	<u>TOTAL</u>
	\$380	\$1,200	\$1,580
Less Tax Paid			(380)
Less Penalty Adj. per Bureau			(100)
Less Penalty Adj. per Commission			<u>(550)</u>
Total Due			\$ 550

An explanation of the taxpayer's right to appeal this decision is included with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

#### **CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of \_\_\_\_\_, 2007, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]

Receipt No.